

1512724 (Migration) [2016] AATA 3128 (22 January 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Jeffery Ellis White
VISA APPLICANT:	Ms Lilibeth Calo Calderon
CASE NUMBER:	1512724
DIBP REFERENCE(S):	BCC2015/2320180
MEMBER:	Fraser Syme
DATE:	22 January 2016
PLACE OF DECISION:	Brisbane
DECISION:	The Tribunal does not have jurisdiction in this matter.

Statement made on 22 January 2016 at 10:23am

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. An application has been lodged for review of a decision of a delegate of the Minister for Immigration, dated 15 September 2015, made at the Australian embassy in Manila to refuse to grant a Visitor (Class FA) visa under s.65 of the *Migration Act 1958* (the Act). This decision is reviewable under s.338(7) of the Act.
2. The review application was lodged with the Tribunal on 16 September 2015. The review applicant included the delegate's decision with the review application. For the following reasons, the Tribunal has no jurisdiction to review the decision as the application was not made in accordance with the relevant legislation.
3. Section 347(2) of the Act specifies who has the right to apply for review of a decision that is reviewable under Part 5 of the Act. In the case of a decision described in s.338(7), an application for review may only be made by the relative referred to in the subsection concerned: s.347(2)(c), namely a: parent; spouse; de facto partner; child or sibling of the visa applicant.
4. Relevant to this matter are the definitions of spouse and de facto partner.
5. The definition of spouse in s.5F includes a requirement the persons are married. The evidence before the Tribunal is the review applicant and visa applicant are not married. It follows that the review applicant is not the spouse of the visa applicant.
6. De facto partner is defined in s.5CB to mean persons in a de facto relationship – which is further defined to mean persons not in a married relationship who have a mutual commitment to a shared life to the exclusion of all others, have a genuine and continuing relationship, that live together or do not live separately apart on a permanent basis and who are not related by family. In relation to visitor visa applications, r.2.03A makes it an additional requirement the visa applicant and the person with whom they are claiming to be in a de facto partner relationship must both be at least 18 years of age. Regulation 1.09A sets out circumstances to have regard to in determining whether persons are in a de facto partner relationship. Those circumstances are: the financial aspects of the relationship; the nature of the household; the social aspects of the relationship, and the nature of the persons' commitment to each other.
7. On 6 January 2016, the Tribunal wrote to the review applicant via his former authorised recipient inviting the review applicant to comment on whether he had made a valid review application. The letter noted only persons in certain relationships had standing to make an application to review a decision to refuse a visitor visa application made outside of Australia. The letter further noted the review applicant had made the review application on the basis he was claiming to be the partner/de facto of the visa applicant. However information on the department file indicated while he and the visa applicant were in a relationship, that information may not be sufficient to demonstrate he and the visa applicant were in a de facto partner relationship. The review applicant was invited to comment in writing on or before 20 January 2016.
8. On 20 January 2016, the Tribunal received a response in writing from the review applicant through his newly appointed registered migration agent. The response of the migration agent concedes the review applicant is not in a de facto partner relationship with the visa applicant. The response further alleges the former authorised recipient of the review applicant is not a

registered migration agent and the former authorised recipient misled the review applicant that the review applicant had standing to make the review application.

9. Having regard to the evidence before it, the Tribunal finds the review applicant is not the de facto partner of the visa applicant.
10. As the decision that is the subject of the review application is a decision covered by s.338(7), the application for review could only be made by a relative referred to in that subsection, such as a spouse or de facto partner of the visa applicant. In the present matter, the review application was made by the review applicant who is not the spouse or the de facto partner of the visa applicant. As such, the application for review is not an application properly made under s.347 and it follows that the Tribunal does not have jurisdiction in this matter.

DECISION

11. The Tribunal does not have jurisdiction in this matter.

Fraser Syme
Member